IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

[IN BANK]

THE PEOPLE, Respondent [FILED AUG11 1993]

v.

GARY CLAUSEN, Appellant

Appellant's petition for review is DENIED.

LUCAS

Chief Justice

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFRONIA, SECOND APPELLATE DISTRICT, DIVISION ONE

THE PEOPLE,	) B064218
	) (Super. Ct. No BA021813)
Plaintiff and Respondent,	)
	) [FILED APR 30 1993]
v.	)
GARY CLAUSEN,	)
Defendant and Appellant.	)

APPEAL from a judgment of the Superior Court of Los Angeles County, J. Stephen Czuleger, Judge. Affirmed.

Peter N. Priamos for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Ronald A. Bass, Senior Assistant Attorney General, Joanne S. Abelson and Jeremy Friedlander, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Gary Clausen appeals from a judgment of conviction entered after he pleaded guilty to violation of section 11351 of the Health and Safety Code, possession or purchase for sale of cocaine, following the trial court's denial of his motion to suppress evidence pursuant to Penal Code section1 538.5 Defendant was sentenced to state prison for the term prescribed by law.

STATEMENT OF FACTS A confidential informant told Los Angeles police officers that a group of Israelis was selling cocaine in an apartment at 4600 Willis, one of the sellers was Dan Gold (Gold), and Gold had previously been arrested for cocaine distribution. The informant also described as part of the group tow individuals who the police believed to be Alex Weingarten (Weingarten) and Hanan Dranes (Dranes). The informant identified Gold and/or Dranes from photographs.

In April of 1990, the police began a daily surveillance of 4600 Willis. they observed that Weingarten drove to 4600 Willis every morning to meet Dranes and left every evening. They used cellular phones, pay phones, and pagers and occasionally drove circuitously. On several

occasions, they met with Audrey Mejia, a woman who had been the object of several major narcotics investigations.

On June 1, 1990, Dranes met Gold in a parking lot, entered Gold's vehicle, emerged five minutes later carrying a bag, and returned with it to his own car. He then drove to another parking lot near 4600 Willis and gave the bag to Weingarten. Weingarten went to 4600 Willis and took the bag inside. Dranes arrived shortly thereafter and also went inside. After half an hour, Dranes left with the bag. He went to another location and gave the bag to another man. The man drove off with the bag in his automobile, met another man, and switched automobiles. The two men met with an undercover agent from the Fullerton police department and were arrested for attempting to buy ten kilograms of cocaine. The police recovered the bag and found $140,000 in cash inside.

On June 5, 1990, Dranes left 4600 Willis and drove to the home of Hannah Gold, Dan Gold's wife. He parked his automobile in the garage and closed the garage door. After a few minutes, he opened the garage door and drove back to 4600 Willis. He then drove to a parking lot. Within 10 to 15 minutes, a white Honda arrived. Dranes got in,

and the Honda pulled into an open parking stall next to Dranes' automobile. Dranes got out of the Honda, removed a large bag from the trunk of his automobile, and put it inside the Honda, at which point the Honda left. The police followed the Honda and tried to block its escape. However, the Honda drove over the center divider, engaged in evasive maneuvers and evaded the police.

On July 10, 1990, Dranes left 4600 Willis and engaged in what the officers called counter-surveillance type driving, including going around the block, pulling to the curb, making a couple of U-turns, and stopping. He then entered a public parking lot. Defendant was at the wheel of another automobile in a nearby space. Dranes and defendant made eye contact and nodded to one another. Defendant got out of his automobile, opened his trunk, walked to Dranes' vehicle and opened the passenger side front door. Dranes handed defendant a folded paper bag, which defendant put in his trunk. He closed the trunk, entered his automobile and drove away. Dranes drove off in the opposite direction.

Police officers pulled defendant's automobile over, ordered him out, handcuffed him, and directed him to sit on

the curb. Officer Larry Voelker approached defendant and asked for permission to search his automobile pursuant to a narcotics investigation. According to Officer Voelker, defendant consented; according to defendant, he refused permission. Officer Voelker took defendant's keys and opened the trunk, where he found the paper bag. He opened it and found a kilogram-sized brick of cocaine. The officers then arrested defendant. The officers did not have a search warrant for defendant's automobile or the bag in the trunk.]

CONTENTIONS

I

Defendant contends the police officers lacked probable cause to stop or detain him, in that all of the activity observed by the officers was consistent with legal conduct and the officers had no reasonable belief that the bag contained contraband.

II

Defendant next contends the police officers lacked probable cause to conduct a warrantless search of the trunk of his automobile or of the paper bag inside.

III

Defendant further contends the search of his automobile and the paper bag inside cannot be justified on the basis of consent, in that the trial court explicitly declined to make a ruling respecting whether or not such consent was validly given.

DISCUSSION

I

Defendant contends the police officers lacked probable cause to stop or detain him, in that all of the activity observed by the officers was consistent with legal conduct and the officer had no reasonable belief that the bag contained contraband. We disagree.

In reviewing the denial of a motion to suppress evidence on appeal, all presumptions favor the proper exercise of the trial court's power to judge the credibility of witnesses, resolve conflicts in testimony, weigh evidence, and draw factual inferences. The court's findings, whether express or implied, must be upheld if they are supported by substantial evidence (People v Superior Court(Keithley) (1975 13 Cal. 3d 406, 410) Thus, we affirm if the police officers had a reasonable suspicion of criminal activity upon which to

detain defendant and also had probable cause to search both the trunk of his automobile and the paper bag inside it. (United States v Sokolow (1989) 490 U.S. 1, 7; United States v Ross (1982) 456 U. S. 798, 807-808)

In the case at bar, defendant was detained when police officers stopped his automobile, instructed him to step out of it and handcuffed him. "[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause. The officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or "hunch."'" (United States v Sokolow, supra, 490 U.S. at p. 7.) That defendant was handcuffed during his detention does not transform the detention into an arrest. (People v Johnson (1991) 231 Cal. App. 3d 1, 14.) Defendant correctly classified the period before his formal arrest as a detention and not an arrest. A temporary restraint of movement incident to an investigation constitutes a detention and not an arrest. (People v Natale (1978) 77 Cal. App. 3d 568, 572) However, he then erroneously argues that the officers needed probable cause to

stop and detain him. Again, the correct standard is a reasonable suspicion supported by articulable facts. (United States v Sokolow, supra, 490 U. S. at p. 7.)

Here, police officers had obtained information from a confidential informant that three individuals, not including defendant, were engaged in narcotics activity. Even probable cause for an arrest, a higher standard than reasonable suspicion for a detention, may consist of information obtained from an undisclosed informer of known reliability. (People v Velasquez (1970) 3 Cal. App. 3d 776, 783)

However, defendant was not stopped and detained simply based on the information supplied by the confidential informant. Instead, over a period of a few months, the officers conducted surveillance on the three individuals about whom they had obtained information from their confidential informant. During this period, the officers observed transactions which they believed to be narcotics transactions based on their experience in the field. On July 10, 1990, one of the individuals who had been identified by the confidential informant and who had engaged in the previous transactions, Dranes, met with defendant after

Dranes had engaged in what police officer believed to be counter-surveillance driving. IN a transaction similar to others involving Dranes that the police had observed, defendant obtained a package from Dranes, placed it in the trunk of his automobile, and drove off.

At this point, based on the information provided by their confidential informant and all of the information the officers had obtained throughout their surveillance, they had a reasonable suspicion that Dranes was involve din narcotics transactions and his transfer of the package to defendant yet another narcotics transaction. "[\c]orroboration is sufficient if police investigation has uncovered probative indications of criminal activity along the lines suggested by the informant...Even observations of seemingly innocent activity provide sufficient corroboration if the anonymous tip casts the activity in a suspicious light..." (People v Johnson (1990) 220 Cal. App.3 d 742, 749, citations omitted.) The police officers were permitted to consider defendant's association with Dranes, an individual believed to be a narcotics dealer, in the determination of their reasonable suspicion that defendant was engaging in criminal activity. (People v Garcia (1960) 187 Cal. App. 2d 93, 100)

Defendant erroneously focuses solely on the transaction between Dranes and himself to conclude that the officers lacked probable cause. However, based on all of the information they had at the time, the officers had a reasonable suspicion that defendant was engaging in criminal activity. AS the United States Supreme Court has stated, "In evaluating the validity of a [detention], we must consider 'the totality of the circumstances -- the whole picture.' [Citation.]" (United States v Sokolow, supra, 490 U.S. at p. 8) Based on the totality of the circumstances known to the police officers at the time, the officers had a reasonable suspicion that defendant was engaging in criminal activity.

II

Defendant next contends the police officers lacked probable cause to conduct a warrantless search of the trunk of his automobile or of the paper bag inside it. Against, we disagree.

It is undisputed that the officers conducted a warrantless search of defendant's automobile and the paper bag in the trunk. Police officers are required to demonstrate objectively verifiable probable cause to believe con-

traband or evidence of crime is located in a vehicle's trunk before a warrantless search is determined to be lawful. (United States v Ross, supra, 456 U.S. at pp. 807-808) "[P]robable cause for a search exists where an officer is aware of facts that would lead a man of ordinary caution or prudence to believe, and conscientiously to entertain, a strong suspicion that the object of the search is in the particular place to be searched. (Cleaver v Superior Court (1979) 24 Cal. 3d 297, 307)

Supporting the officers' decision to search the trunk of defendant's automobile and the paper bag contained therein was the officers' observation of the exchange between defendant and Dranes. The officers had observed Dranes, who from information obtained from a confidential informant and several months' surveillance was believed to be a narcotics trafficker, transfer a packaged to defendant under suspicious circumstances. Based on the information they had amassed to that point, the officers suspected that the package which Dranes transferred to defendant and which in turn defendant placed in the trunk of his automobile contained contraband. In a previous surveillance of Dranes, the police had found cash which had been offered

in exchange for contraband. In another prior surveillance of Dranes, the police had observed another transaction leading to a high speed chase. Thus, based on the facts up to that point, a reasonable person could agree there was a probability that the package contained contraband.

The object of the officers' search was the package which they suspected contained contraband. Based on their observations, the officers obviously entertained a strong suspicions that the object of their search, i.e., the package, was in the trunk of defendant's automobile. Probable cause for the search existed because the officers were aware of facts that would lead individuals of ordinary caution or prudence to entertain a strong suspicion that the contraband was in the trunk of defendant's automobile.

In addition, "[i]f probable cause justified the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." (United States v Ross, supra, 456 U.S. at p. 825.) Thus probable cause justified the search of both the trunk of defendant's automobile and the paper bag within the trunk.

III

Defendant further contends the search of his automobile and the paper bag inside cannot be justified on the basis of consent, in that the trial court explicitly declined to make a ruling respecting whether or not such consent was validly given. In view of the conclusions reached above, that defendant's detention and the search of his automobile and the paper bag inside the trunk were proper, we need not address this issue.

The judgment is affirmed.

NOT TO BE PUBLISHED

SPENCER, P.J.

We concur:

VOGEL(Miriam a.), J.

MASTERSON, J.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 18411 Crenshaw Boulevard, Suite 360, Torrance, California 90504. The matters contained in this declaration are known to me personally and if called upon to testify as to such matters under oath in a court of law, I could and would do so competently.

On November 9, 1993 I served the within PETITION FOR WRIT OF CERTIORARI on the INTERESTED PARTIES in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Torrance, California, addressed as follows:

IRA REINER, District Attorney [Attorney for Respondent]
David Mintz, Deputy District Attorney
Major Narcotics & Forfeiture Division
18-702A, Criminal Courts Building
210 West Temple Street
Los Angeles, California 90012

Clerk of Superior Court [Trial Judge]
For: Honorable J. Stephen Czuleger
210 W. Temple Street
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Daniel E. Lungren
Attorney General of
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I am employed by a member of the bar of the above-entitled court at whose direction service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 9, 1993 at Torrance, California.

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